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MAILED
OCT 20 2010
OFFICE OF PETITIONS

In re Patent of Andrus et al. : LETTER REGARDING
Patent No. 7,714,161 : PATENT TERM ADJUSTMENT
Issue Date: May 11, 2010 : AND NOTICE OF INTENT TO
Application No. 10/597,335 : ISSUE CERTIFICATE OF
Filed: July 21, 2006 : CORRECTION
Atty Docket No. 49506-12 : :

This is a decision on the petition filed on June 9, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred thirty-two (532) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred thirty-two (532) days is **granted to the extent indicated herein**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of five hundred thirty-three (533) days.

On May 11, 2010, the above-identified application matured into U.S. Patent No. 7,714,161 with a revised patent term adjustment of 492 days. On June 9, 2010, patentees submitted the instant petition.

Patentees assert the patent term adjustment indicated in the patent is incorrect and should be recalculated because the Office failed to properly calculate a reduction for the

amendment filed on February 26, 2010, after a notice of allowance was mailed on December 1, 2009.

A review of the application history reveals patentees are correct. A Notice of Allowance was mailed on December 1, 2009. On February 26, 2010, patentees filed an amendment under 37 CFR 1.312. On March 1, 2010 patentees filed a completed Issue Fee Transmittal, the issue fee, and publication fee.

The filing of the February 26, 2010 is a basis for reduction of patent term adjustment pursuant to 37 CFR 1.704(c)(10).

37 CFR 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

Pursuant to 37 CFR 1.704(c)(10), the Office should have entered a period of reduction of 34 days, counting the number of days in the period beginning on February 26, 2010, the date the amendment under 37 CFR 1.312 was filed, and ending on March 31, 2010, the date an Office communication mailed in response to the amendment under § 1.312 was mailed. Accordingly, the period of reduction of 75 days is being removed and a period of 34 days is being entered in connection with the amendment under § 1.312, filed February 26, 2010.

Accordingly, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **five hundred thirty-three (533) days**, which is 356 days of A delay + 356 B delay - 118 {21 + 63 + 34}days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred thirty-three (533) days**.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,714,161 B2

DATED : May 11, 2010

DRAFT

INVENTOR(S) : Andrus et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 492 days

Delete the phrase "by 492 days" and insert – by 533 days--